

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

IN THE MATTER OF THE WINDING DOWN OF:

THE NEW HAMPSHIRE MEDICAL MALPRACTICE
JOINT UNDERWRITING ASSOCIATION

No. 217-2015-CV-00347

RECEIVER'S MOTION FOR APPROVAL OF DISPOSAL OF RECORDS

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), moves for an order approving the disposal of the records of the NHMMJUA and its receivership except for specified records to be delivered to the New Hampshire Insurance Department. As reasons therefor, the Receiver states:

1. This proceeding was commenced on July 21, 2015 pursuant to the recently enacted statute providing for the winding down of the business of the NHMMJUA through a receivership pursuant to RSA 402-C. RSA 404-C:15 - :17. The Court issued a Rehabilitation Order dated July 22, 2015. Affidavit of Peter A. Bengelsdorf, Special Deputy Commissioner, in Support of Motion for Approval of Disposal of Records ("Bengelsdorf Aff.") ¶ 2.

2. The Rehabilitation Order and RSA 404-C:16 directed the Receiver to wind down the business of the NHMMJUA. That process is now essentially complete. As reported in the Receiver's monthly reports, the NHMMJUA stopped issuing policies effective December 31, 2015. On August 25, 2016, the Receiver transferred the NHMMJUA's coverage obligations to The Medical Protective Company ("MedPro") pursuant to the Assumption Agreement approved

on August 5, 2016. The Receiver has resolved the NHMMJUA's tax issues with the federal and state tax authorities. The Receiver has transferred excess NHMMJUA funds to the *Tuttle* Class Action Account pursuant to the Court's orders dated September 11, 2018 and November 7, 2018. The Receiver returned remaining Stabilization Reserve Fund ("SRF") amounts to providers and, on April 3, 2019, transferred unclaimed SRF funds to the Abandoned Property Division of the New Hampshire Treasury pursuant to the order dated March 28, 2018. On May 3, 2019, the Receiver moved for approval to transfer the remaining hardship fund to Endowment for Health, Inc. After that transfer, and subject to the payment of final administrative expenses and transfer of the few remaining assets, the assets and liabilities of the NHMMJUA will have been resolved and disposed of. The Receiver is accordingly addressing remaining administrative issues before filing the final motions for discharge and closure of the proceeding. Bengelsdorf Aff. ¶ 3.

3. One of the last issues is the disposal of the remaining records of the NHMMJUA and the NHMMJUA receivership. Bengelsdorf Aff. ¶ 4. Disposal of such records pursuant to Court order is authorized by RSA 402-C:50, which provides:

Disposition of Records During and After Termination of Liquidation. – Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced.

4. Paper records regarding in-force and historic policies of insurance issued by the NHMMJUA and claims under such policies were transferred to MedPro in connection with the closing of the Assumption Agreement transaction on August 25, 2016. Copies of electronic records concerning the NHMMJUA policies and open claims were also provided to MedPro at that time. MedPro has the NHMMJUA records that it needs to handle obligations under the

NHMMJUA policies in accordance with the Assumption Agreement. The NHMMJUA and Receiver ceased to administer NHMMJUA policies and claims under the policies in August 2016. Bengelsdorf Aff. ¶ 5.

5. The remaining paper records of the NHMMJUA and the receivership consist principally of approximately 85 boxes of administrative and financial records including remaining board of directors minutes and agenda materials; servicing carrier agreements and correspondence; certain historical actuarial reports; certain historical yearly, quarterly and monthly financial statements; accounting records; deposit slips, bill sheets, invoices, claim checks and operating checks; records concerning the Vested Retirement Reserve; records concerning the SRF; historical risk management data; hardship grant applications; W-9's; and various administrative correspondence. The electronic records of the NHMMJUA and the receivership consist principally of administrative and financial records including financial statements, accounting records, bank records, and policy and claims information (the policy and claim information duplicates information provided to MedPro). Other records concern the various steps taken during the receivership, including the MedPro transaction, resolution of federal and state tax issues, and the SRF return. Bengelsdorf Aff. ¶ 6.

6. Records are principally in the possession of The Hays Group, Inc. (the long-time administrator of the NHMMJUA that has continued to provide services to the Receiver). Records of significant transactions concluded during the receivership, such as the MedPro transaction, resolution of federal and state tax issues, and the SRF return are not held by Hays. Such records are generally in the possession of Leone, McDonnell & Roberts (the NHMMJUA's accountants and auditors who continued to provide services to the Receiver), the Special Deputy Commissioner, and counsel to the Receiver. Bengelsdorf Aff. ¶ 7.

7. In light of the progress in winding down the NHMMJUA, and where at the conclusion of the proceeding the NHMMJUA is to be liquidated and the Receiver discharged (see RSA 404-C:17, II), the records of the NHMMJUA and the NHMMJUA receivership are no longer useful. The Receiver accordingly proposes to dispose of the records that can be reasonably and cost-effectively destroyed, both paper and electronic, of the NHMMJUA and the NHMMJUA receivership with the exception of certain records that will be turned over to the New Hampshire Insurance Department for future reference. Bengelsdorf Aff. ¶ 8.

8. The Receiver recommends that he provide the New Hampshire Insurance Department with the following records: (a) the pleadings in the NHMMJUA receivership proceeding; (b) the MedPro Assumption Agreement with its schedules; (c) a schedule of the Stabilization Reserve Fund (“SRF”) returns made by the Receiver as well as the filing concerning unclaimed SRF returns made with the Abandoned Property Division of the New Hampshire Treasury; (d) the NHMMJUA’s federal and state tax returns from 2013 forward, as well as closure filings and agreements resolving issues with federal and state tax authorities. The transferred records will then be subject to the New Hampshire Insurance Department’s record retention policies and procedures. Bengelsdorf Aff. ¶ 9.

9. Subject to providing the New Hampshire Insurance Department with the records identified in the preceding paragraph, the Receiver recommends that the records of the NHMMJUA and the NHMMJUA receivership, whether in paper or electronic form and whether held by Receiver or third parties that have acted for the NHMMJUA or the Receiver, be disposed of pursuant to RSA 402-C:50 as no longer useful. The Receiver that paper records be shredded and that electronic records be deleted to the extent that is reasonably practical. Bengelsdorf Aff. ¶ 10.

WHEREFORE, the Receiver requests that the Court:

- a. Grant this motion;
- b. Issue an order in the form submitted herewith approving the disposal of the records of the NHMMJUA and the NHMMJUA receivership subject to specified records being turned over to the New Hampshire Insurance Department; and
- c. Grant such other relief as equity and justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY AS
RECEIVER OF THE NEW HAMPSHIRE MEDICAL
MALPRACTICE JOINT UNDERWRITING
ASSOCIATION

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May 20, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Receiver's Motion for Approval of Disposal of Records and the proposed order were sent this 20th day of May, 2019, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

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